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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/017,002	12/14/2001	Robert P. Bourdelais	83613AEK	1246

7590

06-04/2004

Paul A. Leipold  
Patent Legal Staff  
Eastman Kodak Company  
343 State Street  
Rochester, NY 14650-2201

EXAMINER

PATTERSON, MARC A

ART UNIT

PAPER NUMBER

1772

DATE MAILED: 06/04/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action**

Application No.

10/017,002

Applicant(s)

BOURDELAIS ET AL.

Examiner

Marc A Patterson

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--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 26 May 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY** [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
  - (b) ☐ they raise the issue of new matter (see Note below);
  - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
  - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_.

3. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☐ The a) ☐ affidavit, b) ☐ exhibit, or c) ☐ request for reconsideration has been considered but does NOT place the application in condition for allowance because: \_\_\_\_\_.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: none.Claim(s) objected to: none.Claim(s) rejected: 1-18, 20 and 23-31.Claim(s) withdrawn from consideration: none.

8. ☐ The drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_.
10. ☒ Other: See attached.

**ADVISORY ACTION**

*Applicant's arguments filed May 26, 2004 have been carefully considered but have not been found to be persuasive.*

1. Applicant argues, on page 7 of Paper No. 11, that the optical elements disclosed by Ouderkirk et al are reflective polarizers.

However, the optical elements disclosed by Ouderkirk et al are not limited to reflective polarizers; Ouderkirk et al teaches an optical film or other optical body which is used for reflective polarizers, but is not only used for reflective polarizers (column 4, lines 12 – 18).

Applicant also argues, on page 8, that because Ouderkirk et al is a reflective polarizer, at least half of the light is reflected from Ouderkirk et al, thus it cannot satisfy the light transmission efficiency of the present claims; furthermore, Applicant argues, the presence of air voids would serve to prevent some of the desired light from being transmitted, further increasing the reflection.

However, as stated above, Ouderkirk et al teaches an optical film or other optical body which is used for reflective polarizers, but is not only used for reflective polarizers; furthermore, Ouderkirk et al does not teach that at least half of the light is reflected or that the presence of air voids prevents some of the desired light from being transmitted.

Applicant also argues on page 8 that it is shown in page 6 of the Declaration that the present invention provides a much higher total transmission, diffuse transmission and diffuse transmission efficiency than does the reflective polarizer of Ouderkirk et al.

However as stated above, Ouderkirk et al teaches an optical film or other optical body which is used for reflective polarizers, but is not only used for reflective polarizers. Furthermore,

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Ouderkirk et al teaches the variation of thickness and other parameters to obtain desired transmission properties of the film (column 12, lines 30 – 33) depending on the particular use of the film (film application; column 12, line 42). Therefore, one of ordinary skill in the art would have recognized the utility of varying the thickness of the layer and other parameters to obtain desired transmission properties. Therefore, the transmission properties would be readily determined through routine optimization of thickness and other parameters by one having ordinary skill in the art depending on the desired end use of the product.

It therefore would be obvious for one of ordinary skill in the art to vary the thickness and other parameters in order to obtain desired transmission properties, since the transmission properties would be readily determined through routine optimization by one having ordinary skill in the art depending on the desired end result as shown by Ouderkirk et al.

Applicant also argues on page 8 that it is clear from the Declaration that one cannot merely adjust the thickness of the layers to get the desired total transmission and diffusion since they cannot be raised simultaneously through thickness variation.

However, as stated above, Ouderkirk et al teaches the variation of parameters other than thickness to obtain the desired transmission properties. An example is the volume fraction of the disperse phase, the effect of which is discussed by Ouderkirk et al immediately before the effect of the thickness of the optical body is discussed (column 12, lines 22 – 24).

Applicant also argues on page 8 that Ouderkirk et al would not go to the trouble to pass light in a desired direction and then undo the accomplishment by diffusing the light as it passes through, because diffusion is counter to the objective of Ouderkirk et al, which cannot transmit more than 50% of the incident light.

However, as stated above, Ouderkirk et al does not teach transmission of less than 50% of incident light, and is not limited to use in reflective polarizers; furthermore, Ouderkirk et al teaches that light is diffusely transmitted through the optical body (column 34, lines 6 – 8) and therefore does not teach that diffusion is inconsistent with the objective of the invention.

2. The declaration under 37 C.F.R. 1.132 filed May 26, 2004 is insufficient to overcome the 35 U.S.C. 103(a) rejection of Claims 1 – 3, 5 – 6, 9, 11 – 13, 15 – 16, 20, 23 and 28 – 29 as being unpatentable over Ouderkirk et al (U.S. Patent No. 5,825,543) in view of Harrison et al (U.S. Patent No. 5,100,862), 35 U.S.C. 103(a) rejection of Claims 4, 8, 14, 24 – 27, 30 – 31 as being unpatentable over Ouderkirk et al (U.S. Patent No. 5,825,543) in view of Harrison et al (U.S. Patent No. 5,100,862) and further in view of Aylward et al (U.S. Patent No. 6,017,686), 35 U.S.C. 103(a) rejection of Claims 7 and 10 as being unpatentable over Ouderkirk et al (U.S. Patent No. 5,825,543) in view of Harrison et al (U.S. Patent No. 5,100,862) and further in view of Bourdelais et al. (U.S. Patent No. 6,326,109), 35 U.S.C. 103(a) rejection of Claim 17 as being unpatentable over Ouderkirk et al (U.S. Patent No. 5,825,543) in view of Harrison et al (U.S. Patent No. 5,100,862) and further in view of Wu et al (U.S. Patent No. 5,346,954) and 35 U.S.C. 103(a) rejection of Claim 18 as being unpatentable over Ouderkirk et al (U.S. Patent No. 5,825,543) in view of Harrison et al (U.S. Patent No. 5,100,862) and Aylward et al (U.S. Patent No. 6,017,686) and Yamamoto et al (U.S. Patent No. 5,502,011).

The declaration provides transmission data on an optical body prepared in the manner of Ouderkirk et al, and states that the present invention provides a much higher total transmission, diffuse transmission and diffuse transmission efficiency than does the reflective polarizer of

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Ouderkirk et al and that one cannot merely adjust the thickness of the layers to get the desired total transmission and diffusion since they cannot be raised simultaneously through thickness variation.

However, as stated above, Ouderkirk et al teaches an optical film or other optical body which is used for reflective polarizers, but is not only used for reflective polarizers. Furthermore, Ouderkirk et al teaches the variation of thickness and other parameters to obtain desired transmission properties of the film (column 12, lines 30 – 33) depending on the particular use of the film (film application; column 12, line 42). Therefore, one of ordinary skill in the art would have recognized the utility of varying the thickness of the layer and other parameters to obtain desired transmission properties. Therefore, the transmission properties would be readily determined through routine optimization of thickness and other parameters by one having ordinary skill in the art depending on the desired end use of the product.

Furthermore, as stated above, Ouderkirk et al does not teaches the variation of parameters other than thickness to obtain the desired transmission properties. An example is the volume fraction of the disperse phase, the effect of which is discussed by Ouderkirk et al immediately before the effect of the thickness of the optical body is discussed (column 12, lines 22 – 24).

### ***Conclusion***

3. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marc Patterson, whose telephone number is (571) 272 – 1497. The examiner can normally be reached on Monday through Friday from 8:30 AM to 5:00 PM. If attempts to reach the examiner by phone are unsuccessful, the examiner's supervisor, Harold

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Pyon, can be reached at (571) 272 – 1498. FAX communications should be sent to (703) 872-9310. FAXs received after 4 P.M. will not be processed until the following business day.

Marc A. Patterson, PhD.

*Marc Patterson*  
Art Unit 1772

*Harold Pyon*  
HAROLD PYON  
SUPERVISORY PATENT EXAMINER  
1772

6/3/04